DOCUMENT RESUME

ED 116 520 HE 006 847

TITLE	A Manual to Assist the Public Higher Education Institutions of North Carolina in the Matter of Student Residence Classification for Tuition Purposes.
INSTITUTION	North Carolina Univ., Chapel Hill.
PUB DATE	Jul 75
NOTE	64p.; Revised July 1974 and July 1975
EDRS PRICE	MF-$0.76 HC-$3.32 Plus Postage
DESCRIPTORS	Classification; Educational Legislation; Guides; *Higher Education; Manuals; *Nonresident Students; *Residence Requirements; *Resident Students; *Student Costs; Student Financial Aid
IDENTIFIERS	North Carolina

ABSTRACT

This manual is intended to articulate the rules and regulations for determining residence status in the State of North Carolina for students attending North Carolina public institutions of higher education. Nonresident students are required by law to pay a substantially higher cost for their education. The manual includes a definition of terms; procedure for classifying by residence for tuition purposes; classification determinations; and examples of appropriate residence classifications. (JMF)

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A MANUAL
TO ASSIST THE PUBLIC HIGHER EDUCATION INSTITUTIONS OF NORTH CAROLINA IN THE MATTER OF STUDENT RESIDENCE CLASSIFICATION FOR TUITION PURPOSES

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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Originally adopted July 1973
Revised July 1974
Revised July 1975
The Board of Governors
The University of North Carolina

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I. INTRODUCTION.

The public institutions of higher education were established and are maintained by the State of North Carolina primarily for the benefit of qualified residents of North Carolina. The consequent substantial commitment of public resources to higher education is predicated on the proposition that the State does benefit significantly from the existence of large numbers of citizens whose capacity for effective discharge of civic, professional, and social responsibilities has been enhanced by the opportunity for advanced educational experiences. Accordingly, as a matter of State policy, the benefits of higher education are provided so far as practicable at minimal cost to students whose quality and duration of residence in North Carolina render them "people of the State." [See North Carolina Constitution, Article IX, Section 9.]

While the practice of permitting a limited number of nonresidents to enroll in the North Carolina public institutions of higher education is educationally sound, considerations of equity dictate that such students pay the approximate actual cost of their education, already provided by the citizen taxpayers of North Carolina in anticipation of present and future benefit to the State. Accordingly, it is the long-standing practice of the State to require students who are not residents of the State to pay a higher rate of tuition than that charged students whose legal residence in the State reasonably assures that they have already contributed, and will continue

to contribute, substantially to the State in their capacity as resident citizens. [See General Statutes 116-11(7) and 116-144.]

A. Historical Context.

Until May of 1973, determination of a student's residence status for tuition purposes rested upon the easily administered statutory requirement that "a legal resident must have maintained his domicile in North Carolina for at least the twelve months next preceding the date of enrollment or re-enrollment in an institution of higher education in this State," with the express proviso that "student status in an institution of higher learning in this State shall not constitute eligibility for residence to qualify said student for in-state tuition" [G.S. 116-143.1, 1971; emphasis added]. The administrative consequence of this law was to make necessary, in most cases, only one inquiry concerning residence status for each student, at the outset of the higher education experience, since time spent enrolled as a student could not be counted in satisfaction of the twelve-month eligibility requirement.

The 1973 Session of the General Assembly amended the applicable law, with the consequence that a person who might already be enrolled was no longer necessarily precluded from demonstrating during the period of his or her enrollment that he or she had become a legal resident of North Carolina and been so for such a duration as to be entitled to the in-state tuition rate. The administrative consequences of this modification of the law were substantial. Two inquiries were now mandated by the statute. First, had the applicant for classification as a legal resident in fact lived in North Carolina for a minimum

period of twelve months immediately prior to the proposed effective date of his or her classification as a resident for tuition purposes? Second, during the twelve-month period in question, did the applicant's presence in the State constitute legal residence? Thus, a carefully detailed inquiry was now to be made in each such case concerning the residential status of the applicant, as measured by established legal principles controlling the disposition of questions about one's place of legal residence.

In 1974 the General Assembly further amended the statute: (1) to grant a statutory grace period to certain persons who, following classification as residents for tuition purposes and during enrollment, lost North Carolina legal residence, with the effect that such persons should continue to enjoy the in-state tuition rate for a specified period of time and (2) to permit a shortening of the prescribed twelve-month qualifying period of residence for a resident whose spouse had continuously maintained residence in-state from a point in time more remote than that of the applicant.

In 1975 the General Assembly again amended G.S. 116-143.1, this time in both formalistic and substantive ways. Formalistically, many of the provisions of the 1973 law were retained but textually organized so as to make more obvious the elements of the statute; to this structure were added certain definitions of terms, whose meaning was already dictated or implied by the prior law. Substantively, the previously existing prima facie evidence rules, which made evidentially important the domicile of one's parents, were modified by an exception that made inconsequential, or at least less significant,

the nonresidence of parents whose applicant child had lived in this State the five years preceding the subject enrollment or re-registration. Most important, subsection (f) of the 1975 law established, in the tuition status context, that essentially the fact of marriage alone was neither to favor nor disadvantage a married person of either sex. This, in effect, rendered inoperative in the present context the common law presumption that a wife's domicile is presumed to be that of her husband. [The full text of G.S. 116-143.1 is set forth in Appendix A.]

B. Purposes of Manual.

The purpose of this manual is to articulate rules and regulations and set forth collateral law essential to the effective implementation of G. S. 116-143.1 and to provide guidance to each institution and its students in meeting their respective responsibilities under the law as to classification of persons by residence for tuition purposes.

G. S. 116-143.1, in its successive revisions, necessitated the development and revision of this manual to insure faithful and effective implementation of the statute. The public higher education community, in discharging its responsibilities under the statute, understands that the precepts of "due process" and "equal protection of the laws" dictate that a rigorous classification inquiry be undertaken to insure as fully as possible that persons who are not legal residents for tuition purposes of North Carolina will be charged the legally prescribed higher tuition rate and persons who are in fact legal residents of North Carolina for tuition purposes will be afforded the legally prescribed lower tuition rate.

II. DEFINITION OF TERMS.

The language of residency determination includes many legal terms as well as certain lay terms which, of necessity, have a specialized meaning for present purposes. The following definitions shall be controlling in connection with the interpretation and application of G.S. 116-143.1:

A. Bona fide - in good faith; in the context of domiciliary inquiries, describes the quality of certain relevant conduct and its motivation, viz., acts performed not to subvert residence law but to meet its requirements to establish a genuine legal residence.

B. Domicile - one's permanent dwelling place of indefinite duration, as distinguished from a temporary place of abode; synonymous with "legal residence."

1. Domicile may be established:

a. By birth; i.e., a child upon birth has the domicile of his or her parents and retains the same until there is a legally effective change in that domicile;

b. By operation of law, as in the case of a minor whose domicile, in most cases, is presumed conclusively to be that of his or her parents (actual physical presence in the new state of domicile not required in such cases); or

c. By choice. Assuming the existence of no disabilities such as infancy, a person may establish domicile in a jurisdiction of his or her choice.

2. One always has a domicile. [Note. One is not guaranteed under the law, however, always to have a state in which one qualifies as a resident for tuition purposes.]

3. One retains a given domicile until it is abandoned and another is established.

4. One never has more than one domicile at a given time.

5. Establishing domicile by choice requires the overt act of establishing physical residential presence in the State while maintaining concurrently the intent to make it one's permanent home of indefinite duration.

6. The requisite domiciliary intent is tested by evaluating relevant, objectively verifiable conduct which is held to constitute a manifestation of the state of mind of the actor. The following types of inquiries, or combinations thereof, may be significant, though no one item, nor any combination of items, will necessarily control resolution of the question:

a. Living or not living in the home of one's parents.

b. Place where one voted or registered to vote.

c. Place where one has served on jury duty.

d. Place where one has registered and/or licensed a car.

e. Place where one last acquired a driver's license.

f. Place where one has filed state income tax returns.

g. Place where one maintains personal property and last listed such for taxation.

h. Place where one owns a home or other real property and pays taxes thereon.

i. Place where one spends substantial parts of available vacation time.

j. Place where one is or was employed or working gainfully.

k. Place where one maintains membership in one or more professional associations, unions, and other organizations.

l. Place where one last attended or graduated from high school.

m. Place where one resided before enrolling in an institution of higher education.

n. Sources of one's financial support.

C. Institution of higher education - in general usage, all institutions, public and private, offering educational instruction above the level of the secondary school, specifically the senior institutions (universities, liberal arts colleges, and independently organized graduate or professional schools) and the two-year institutions (community colleges, junior colleges, technical institutes, and semi-professional schools); under G. S. 116-143.1, the constituent institutions of The University of North Carolina and the community colleges and technical institutes under the jurisdiction of the State Board of Education.

D. Legal guardian - a person who by court order has been appointed to act in the place of an individual's parents. (There are several types of legal guardian; the type having major significance under G.S. 116-143.1 is "guardian

of the person.") Guardianship should be distinguished from adoption, whereby one acquires new legal parents.

E. Legal residence - synonymous with domicile [see above].

F. Minor - a person below the age of 18 years; a minor is presumed to be legally incapable of establishing a domicile independent of that of his or her parents.

G. Presumption - a legal device to place the burden of proof or of producing evidence on one or another party to a proceeding; i.e., in the absence of satisfaction of the burden, the presumption is conclusive that an assumed state of affairs exists.

H. Prima facie - by a first or initial showing (of facts to support some conclusion or circumstance). A prima facie showing has the effect of placing the burden of disproof on the party opposing the conclusion or circumstance. [G.S. 116-143.1(e) contains a prima facie evidence rule relating the domicile of a student to that of his or her parents. Read along with the rest of subsection (e) and with reference to subsection (d), however, this rule is transformed by the whole statute from the burden of proof function into simply a substantive beginning point of inquiry for the residence classification.]

I. Residence - according to the context, used either technically to mean legal residence (domicile) or, loosely, to mean abode irrespective of duration.

J. Tuition - the basic fee for educational services that an institution charges its students each time they register.

III. PROCEDURES FOR CLASSIFYING BY RESIDENCE FOR TUITION PURPOSES.

A. Initial Classification.

A student admitted to initial enrollment in an institution (or permitted to re-enroll following an absence from the institutional program which involved a formal withdrawal from enrollment) shall be classified by the admitting institution either as a resident or as a nonresident, for tuition purposes, prior to actual matriculation. Particular officials or offices shall be designated by the chief executive officer of the institution to evaluate all such initial-classification cases and to assign an appropriate classification consistent with the requirements of State law and the provisions of this manual. Basic data on which such assignment shall be based shall be collected in accordance with the common informational form provided herein [see Appendix B]; additional data or documentation deemed essential to a reliable determination may be elicited from the student, as deemed appropriate by the responsible official or office. [See G. S. 116-143.1(d).]

B. Subsequent Classification Inquiries: Reclassification.

A resident status classification once assigned (and finalized pursuant to any appeal properly taken) may be changed thereafter only at intervals corresponding with the established primary divisions of the academic calendar of the institution, viz., at the beginning of a semester, quarter, or otherwise demonominated basic interval of the academic calendar. No change in resident status classification for tuition purposes (and thus no change in applicable billing rates) shall be effected during such a semester, quarter,

or term, with resulting increases or decreases in the tuition obligation prorated for a portion of such semester, quarter, or term. Reclassifications may be appealed by either the student or the institution, under the rules set forth in Section E, below. If the reclassification inquiry (or any appeal taken in connection therewith) is not completed prior to commencement of the next succeeding pertinent semester, quarter, or term, the pre-existing classification shall prevail for purposes of tuition billing, with the understanding that a final conclusion in the classification or reclassification shall result in appropriate, prompt supplemental billing for any underpayment or refund for overpayment, for the intervening term(s).

An institution is not required to investigate independently to determine whether there may have been a change in operative facts relative to an individual student's existing resident status. Under the burden of conscientious and good faith discharge of its administrative responsibilities, however, an institution has the responsibility to investigate a student's resident status where it has reason to believe from the relevant information that there <u>has</u> <u>been</u> a change in operative facts relative to an individual student's resident status. The need to make such an inquiry rests upon a finding by the institution that the likelihood of a change in operative facts is substantial. Where the information comes from a third party, the institution may weigh the substantiality of the information in determining whether to investigate.

The institution shall provide to each student at the time of and in connection with the transmission to the student of each periodic bill for

tuition charges a notice of the circumstances under which and the time at which a change in classification may occur. The notice shall be similar to that set forth in Appendix C.

1. Changes from nonresident to resident classification. If a student is classified initially as a nonresident, it is the responsibility of the student thereafter to petition the responsible official or office for reclassification to resident status if the student believes that subsequent changes in facts justify such a reclassification. The institution will not assume responsibility for initiating such an inquiry independently. The student may file such a petition at any time after the expiration of the statutorily prescribed qualifying twelve-month period during which the student allegedly was a bona fide domiciliary of the State. The change in classification, if deemed to be warranted, shall be effective at the academic term next following the date of application for reclassification, provided, that a change in residence classification may be retroactive to the beginning of an academic term during which application was made if the twelve-month period is found to have been satisfied as of the beginning of that term. No change to in-state status may be obtained by a student for an academic term that has ended before the date of the petition for reclassification unless a change in residence law or policy itself is the cause for the reclassification petition and that change was made retroactive in effect to a point in time preceding the expired academic term(s).

2. Changes from resident to nonresident classification. If a student is classified initially as a resident, again, either the student or the institution thereafter may initiate a reclassification inquiry, based on changes in facts which would appear to justify such an inquiry. Again, it is the responsibility of the affected student who is aware of changes in facts which would serve to apprise a reasonable person that there was reasonable doubt about the validity of the existing residential classification to file a petition for reclassification. Failure of a student during a period of more than one semester, quarter, or term from the date of adverse change in operative facts to file such a petition under the circumstances prescribed shall be cause for appropriate disciplinary action against the student by the institution, including, but not necessarily limited to, cancellation of registration and enrollment. The institution may initiate the reclassification inquiry independently at any time after the occurrence of the material events or changes in facts which give rise to a reasonable doubt about the validity of the existing residential classification.

Where a classification that had favored the student is erroneous through the fault of the institution, as by misclassification or clerical error in notice to the student, the student is not responsible for paying the out-of-state differential between the date of the occurrence of the error and its discovery, and the effective date of a classification corrected from such institutional error to nonresident status is the term next following the term

in which such error was discovered. However, where a classification favorable to the student is erroneous through the fault of the student, as by falsification or withholding of pertinent information, the student is responsible for the out-of-state tuition differential retroactively to the beginning of the term with respect to which the original, erroneous classification was made.

C. Transfer Students.

When a student transfers from one public institution of higher education in North Carolina to another, he or she shall be treated as a new student by the institution to which the student is transferring and shall be assigned an initial residence classification for tuition purposes consistent with the requirements of Section A, above.

The transfer into or admission to a different component of the same institution (viz., from an undergraduate to a graduate or professional program) shall not be construed as a transfer from one institution to another and, thus, shall not by itself require a reclassification inquiry unless (1) the affected student requests a reclassification inquiry or (2) the transfer or enrollment occurs following the elapse of more than one quarter, semester, or term during which the student was not enrolled as a student.

D. Responsibility for Supplying Information.

An applicant or enrolled student subject to either a classification or reclassification inquiry is responsible for supplying all information requested by the institution in connection with the classification process. [See G.S.

116-143.1(d).] Failure to comply with all requests for information prescribed by the institution shall be attended by the following consequences:

1. In the context of an initial classification inquiry affecting a prospective enrollee, the student shall be classified a nonresident for tuition purposes;

2. In the context of a reclassification petition initiated by the student to acquire a change from nonresident to resident status, the student shall continue to be classified a nonresident for tuition purposes;

3. In the context of a reclassification inquiry anticipating a change from resident to nonresident status for tuition purposes, the student may be subjected to disciplinary action, including, but not limited to, cancellation of registration and enrollment or dismissal.

Knowing falsification of any response made to any institutional request for information may subject the individual to disciplinary action, including dismissal from the institution, in the discretion of the institution.

E. Appeals.

The decision of the official or office of the institution responsible initially for residence classification or reclassification decisions may be appealed by the affected individual as follows:

1. To the chief executive officer of the institution, or the officer's delegate (who may be either an individual official or a committee designated

by the chief executive officer), pursuant to such rules and procedures as may be prescribed by the chief executive officer; if not satisfied with the disposition of the complaint, the individual may then appeal

2. To the State Residence Committee pursuant to such rules and procedures as that Committee may prescribe.

Grounds for appeal to the State Residence Committee from the institutional decision on appeal shall be that the institutional disposition of the application for classification or reclassification violated State or federal law or was inconsistent with the provisions of this manual. There shall be no other grounds for appeal. Final disposition of the appeal by the State Residence Committee shall be deemed to exhaust the administrative remedies of the appellant with respect to the institutional classification or reclassification action appealed from.

The decision of the official or office of the institution responsible initially for residence classification or reclassification decisions may be appealed by the institution to an institutional appeals agent or body designated by the institution's chief executive officer. Only the institution's chief executive officer or his or her duly appointed agent shall have the authority to enter an institutional appeal. If an initial residence classification is appealed by the institution to the institutional appeals agency and the initial residence classification is confirmed upon that appeal, the initial classification may not be further appealed by the institution to the State Residence Committee.

This limitation upon institutional appeals shall not prohibit institutional inquiry to the State Residence Committee for purposes of general advice or other assistance.

F. State Residence Committee.

1. Composition. The State Residence Committee shall consist of one individual appointed by the President of The University of North Carolina from the staff of the Office of General Administration of the University; one individual appointed by the President of the Community College System from the staff of the System; six institutional representatives appointed by the President of the University; six institutional representatives appointed by the President of the Community College System; and, ex officio, a representative appointed by the Attorney General from his staff.

2. Responsibilities. The responsibilities of the State Residence Committee shall be:

a. To decide cases appropriately appealed to it from a State institution of higher education;

b. To evaluate the administrative practices and substantive rules associated with implementation of State law relating to residential classification for tuition purposes and to make recommendations, respectively, to the Board of Governors of The University of North Carolina and to the State Board of Education concerning any perceived need for changes in applicable law or administrative policies and procedures associated with the responsibility of classifying students by residence for tuition purposes; and

c. To serve as a source of general advice to and sharing of information with and among affected institutions of higher education concerning residence questions.

IV. CLASSIFICATION DETERMINATIONS.

A. Fundamental Requirements of Law.

The subsections of G.S. 116-143.1 may be highlighted as follows:

1. Subsection (a). There is a distinction between legal residence and residence for tuition purposes. The requirements of the law are applicable to all students or applicants for attendance at every public university, community college, or technical institute of this State.

2. Subsection (b). To qualify as a resident for tuition purposes, a person must become a legal resident and remain a legal resident for at least twelve months immediately prior to classification.

3. Subsection (c). Twelve months legal residence means more than simple abode in North Carolina. In particular it means maintaining a domicile (permanent home of indefinite duration) as opposed to "maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education."

4. Subsection (d). Being classified a resident for tuition purposes is contingent on the student's providing all information that the institution may require in making the residence determination.

5. Subsection (e). If an individual, irrespective of age, has living parent(s) or court-appointed guardian of the person, the domicile of such

parent(s) or guardian is, prima facie, the domicile of the individual; but this prima facie evidence (or presumption) of the individual's domicile may be rebutted by other information. Further, nondomiciliary status of parents is not deemed prima facie evidence of the applicant child's status if the applicant has lived (though not necessarily legally resided) in North Carolina for the five years preceding enrollment or re-registration.

6. Subsection (f). Marriage alone does not prevent a person from becoming or continuing to be a resident for tuition purposes, nor does marriage in any circumstance insure that a person will become or continue to be a resident for tuition purposes. Marriage and the legal residence of one's spouse are, however, relevant information in determining residentiary intent.

7. Subsection (g). If both a husband and his wife are legal residents of North Carolina and if one of them has been a legal resident longer than the other, then the longer duration may be claimed by either spouse in meeting the twelve-month requirement for in-state tuition status.

8. Subsection (h). A North Carolinian who serves outside the State in the armed forces does not lose North Carolina domicile simply by reason of such service.

9. Subsection (i). If a person (1) has been a bona fide legal resident, (2) has consequently been classified a resident for tuition purposes, and (3) has subsequently lost North Carolina legal residence while enrolled at a public institution of higher education, that person may continue to

enjoy the in-state tuition rate for a grace period of twelve months measured from the date on which North Carolina legal residence was lost. If the twelve months ends during an academic term for which the person is enrolled at a State institution of higher education, the grace period shall extend, in addition, to the end of that term. The fact of marriage to one who continues domiciled outside North Carolina shall not by itself cause loss of legal residence, marking the beginning of the grace period.

B. Aspects of Interpreting and Applying the Basic Statutory Provisions.

1. The concept of domicile. Domicile and its duration are the bases for the classification system used to determine resident status for tuition purposes under G. S. 116-143.1. The definition of "domicile" set forth in Section II.B., above, describes some of its attributes, including its reliance on subjective intent as measured by overt acts of the individual. More specifically, the concept of "domicile," or "legal residence," embodies two elements: residential presence in a state coupled with a particular intent referable to that presence. North Carolina law on this subject is summarized in a recent North Carolina Supreme Court case as follows:

> Precisely speaking, residence and domicile are not convertible terms. A person may have his residence in one place and his domicile in another. Residence simply indicates a person's actual place of abode, whether permanent or temporary. Domicile denotes one's permanent, established home as distinguished

> from a temporary, although actual, place of residence. When absent therefrom, it is the place to which he intends to return; it is the place where he intends to remain permanently, or for an indefinitive length of time, or until some unexpected event shall occur to induce him to leave. Two things must concur to constitute a domicile: First, residence; second, the intent to make the place of residence a home.
>
> * * * *
>
> One who lives in a place for a temporary purpose with the design of leaving when that purpose has been accomplished is a "mere sojourner."
>
> Therefore, a residence for a specific purpose, "as at summer or winter resorts, or to acquire an education, or some art or skill in which the animus revertendi accompanies the whole period of absence," effects no change of domicile.
>
> A domicile, once required [sic] is presumed to continue. It is never lost until a new one is established, and the burden of proof rests upon the person who alleges a change.
>
> To effect a change of domicile there must be (1) an actual abandonment of the first domicile, accompanied by the intention not to return to it and (2) the acquisition of a new domicile by actual residence at another place, coupled with the intention of making the last acquired residence a permanent home.
>
> [Hall v. Board of Elections, 280 N.C. 600 (1972)]

2. The beginning point of inquiry in determining domicile. While some students are minors under law (under age 18) and so by general law are presumed to have the domicile of their parents, the great majority of students, being 18 or older, have the legal capacity, exercised or not, to establish their own domicile. The Hall case makes clear, however, that this capacity

must indeed be demonstrably exercised if domicile other than that of the parents is to be recognized.

> The presumption is that a student who leaves his parents' home to enter college is not domiciled in the college town to which he goes. However, this presumption is rebuttable. It is an inference of fact based on probabilities and "the common experience of mankind" under the circumstances.
>
> [Hall v. Board of Elections, 280 N.C. 600 (1972)]

The beginnings of the residentiary inquiry are further related to parental domicile by G.S. 116-143.1(e), which explicitly makes that beginning point the parental domicile by rendering the parental domicile, prima facie, the domicile of the student child (with, of course, the exception under the five-year rule described in paragraph IV.A.5.) Hall then provides the guideline for the next step of the residentiary inquiry by noting:

> An adult student may acquire a domicile at the place where his university or college is situated, if he regards the place as his home, or intends to stay there indefinitely, and has no intention of resuming his former home. If he goes to a college town merely as a student, intending to remain there only until his education is completed and does not change his intention, he does not acquire a domicile there.

This distinction of the general law, between transitory and permanent residentiary intent (one constantly manifest in the higher education context), is reiterated in the requirements of G.S. 116-143.1(c), whereby the applicant for resident tuition status must prove bona fide residentiary intent by demonstrating a motive for presence in the State greater than "mere temporary residence

or abode incident to enrollment . . . ." The student who has living parents or court-appointed guardian of the person rebuts or reinforces the statutory prima facie evidence of his or her domicile by all the other information supplied by the student; the student having no such parent or guardian or being under the coverage of the five-year rule has domicile determined from all the information without a statutorily supplied domiciliary beginning point.

3. The nature of domiciliary evidence. To determine whether a student has established a domicile in North Carolina, as distinguished from a mere temporary abode, a conclusion about the intent of the student, as measured by objectively verifiable conduct, must be reached; that is, does the conduct of the student, taken in total, manifest an intention to make North Carolina his or her permanent dwelling place.

> A student's physical presence in the college town . . . demonstrably fulfills the residency requirement of domicile. However, the court must rely upon both his words and his actions to determine whether the student has the requisite intent to make the town his home and to remain there indefinitely, the animus manendi.
>
> * * * *
>
> A person's testimony regarding his intention with respect to acquiring a new domicile or retaining his old one is competent evidence, but it is not conclusive of the question. "All of the surrounding circumstances and the conduct of the person must be taken into consideration." The rule is well stated in 25 Am. Jur. 2d Domicile §§ 91 and 93 (1966): "The determination of domicile depends upon no one fact or combination of circumstances,

> but upon the whole, taken together, showing a preponderance of evidence in favor of some particular place as the domicile. A person's own testimony regarding his intention with respect to acquiring or retaining a domicile is not conclusive; such testimony is to be accepted with considerable reserve, even though no suspicion may be entertained of the truthfulness of the witness . . . . [C]onduct is of greater evidential value than declarations. Declarations as to an intention to acquire a domicile are of slight weight when they conflict with the facts."
>
> [Hall v. Board of Elections, 280 N.C. 600 (1972)]

This verifiable conduct, or domiciliary action, is of the type described in paragraph II.B.6. and may be characterized as information "favorable" and "unfavorable" to a domiciliary claim.

The following factors, if actually present in the case, would tend to support a finding that the student did not intend to establish a domicile in North Carolina:

a. The student first arrived and established his or her abode in North Carolina coincident with enrollment in an institution of higher education, with no indication of any substantial motivation other than educational pursuits as explanation for his or her presence; thus, it could be inferred that he or she is present in the State for the limited purpose of pursuing an education, with the reasonably inferred expectation that he or she will leave the State upon completion of that limited objective.

b. The student lives part of the year in the college town and returns to the home of his or her parents during holiday and/or vacation time;

thus, it could be inferred that the student treats the presence in the State as temporary, incident only to accomplishment of the limited purpose of acquiring an education, rather than as being incident to the maintenance of his or her "home."

c. The student is supported financially, either totally or in substantial part, by his or her parents during the period of presence in North Carolina while attending the institution; thus, it could be inferred that the home of his or her parents remains the "base of operations" and actual home. Stated differently, the inference could be that the student has not yet undertaken a degree of independence which bespeaks the establishment of his or her own "home."

d. The student leaves his or her basic permanent possessions, or personal property, at the home of the parents, while possessing in North Carolina only those items which are necessary for temporary residential needs; thus, it could be inferred that the residence in North Carolina is only of a temporary character, with an intention to return ultimately to the home of his or her parents.

e. The student does some or all of the following acts in a state other than North Carolina: registers to vote; files income, personal property, or real property tax returns; registers or licenses a motor vehicle; acquires a driver's license; owns real property; is employed; maintains memberships in social, fraternal, religious, or other organizations; maintains bank accounts.

The following factors, if actually present in the case, would tend to support a finding that the student did intend to establish domicile in North Carolina:

a. The student moves to North Carolina for a significant period of time prior to enrollment in an institution of higher education, during which period he or she is employed or engaged in other substantial activity unrelated to educational pursuits; the possible inference is that educational pursuits were not the exclusive motivation for coming to the State or perhaps the continuing sole motivation therefor.

b. The student comes to North Carolina with a spouse and/or children, either significantly before or immediately coincident with his enrollment; the possible inference is that the student is the head of an independent household who is establishing a family "home" in this State.

c. The student purchases a residence in the State where he or she resides, with or without other family members (i.e., spouse and/or children); the possible inference is that the student has "put down roots" on a permanent basis and, incident thereto, is engaged in educational pursuits.

d. The student does some or all of the following acts in North Carolina: registers to vote, files income, personal property, or real property tax returns; registers or licenses a motor vehicle; acquires a driver's

license; owns real property; is employed; maintains membership in social, fraternal, religious, or other organizations; maintains banking accounts.

4. Weighing and balancing domiciliary evidence; the burden of proof. As noted in Hall, the favorable and unfavorable evidence of residentiary (domiciliary) intent is to be weighed in light of "probabilities and 'the common experience of mandkind' under the circumstances." For a student to be classified a resident for tuition purposes, the balancing of all this evidence must produce a clear preponderance of the evidence supporting the assertion of in-state residence.

a. Under G. S. 116-143.1(e) a showing that the student's parents are legal residents of North Carolina is prima facie evidence that the student is also a legal resident of North Carolina, but, as prima facie evidence, it is a favorable factor to be weighed with all other considerations in reaching a conclusion with respect to the student's contention that he or she is a legal resident for tuition purposes. A showing, on the other hand, that the student's parents are not residents of North Carolina places upon the student a burden to come forward with compelling evidence that he or she is a legal resident of North Carolina and has been so for the required twelve months.

b. Normal variation among cases in relevant information also renders the residentiary inquiry more a function of reasonable surmise than formula computation. For example, one person may be active in community affairs, demonstrating obviously a putting down of local roots; another person

may be passive about such involvement but invest heavily in local financial opportunities. Both persons appear more than transient, though the evidence in support of their claims of residence would differ considerably.

c. The simply natural difference among persons and places may also make a given residentiary factor possess differing significance. A student who does not possess a North Carolina driver's license because he does not care to drive generates thereby no adverse residentiary information; but the student who possesses no in-state driver's license because he got a driver's license in New York "just last year" demonstrates a continued reliance on the benefits of another sovereign state in direct conflict with residentiary claims in this State.

In sum, all factors of record come together and they are assessed as to whether or not an individual has shown by a clear preponderance of evidence in the reporting of all demonstrable evidence that he or she has become a domiciliary of North Carolina and has been so for at least the twelve months immediately preceding the term for which resident status for tuition purposes is sought.

5. Special rules under the law of domicile. The assessment of domicile, though governed by the rules and procedures of general law and statute described in this Section B, above, is also affected by special rules derived, again, from both general and statutory law.

a. Domicile of a minor.

(1) A person under 18 years of age is a minor by North Carolina law and deemed under the common law dependent on his or her parents for domicile.

(2) As between living parents, a minor's domicile is presumed by common law to be that of the father.

(3) If one parent is deceased, the minor's domicile is that of the surviving parent.

(4) If the parents are divorced or legally separated, the minor's domicile is that of the parent to whom custody of the minor has been awarded by court order.

(5) If no custody has been granted by virtue of court order, the domicile of the minor is that of the parent with whom he or she lives.

(6) If the minor lives with neither parent, in the absence of a custody award, the domicile of the minor is presumed to remain that of the father.

(7) If the minor lives for a part of the year with each parent, in the absence of a custody award, the domicile of the minor is presumed to remain that of the father.

(8) If a minor is an orphan and has no court-appointed guardian of the person, the minor's domicile is that of the person with whom

he or she lives; otherwise, the minor's domicile remains at the place where he or she last acquired a domicile through a parent or court-appointed guardian of the person.

(9) If legal adoption of a minor has occurred, the minor's domicile is that of the adoptive parents, subject to the foregoing rules concerning relationships between husband and wife vis-a-vis the domicile of a child.

b. The "emancipated minor." Even though a person has not achieved the chronological age required by law for adulthood, under certain circumstances the person may be treated by the law as being sufficiently independent from the parents as to enjoy a species of adulthood for legal purposes. The consequence, for present purposes, of such circumstances is that the affected person is presumed to be capable of establishing a domicile independent of that of the parents. It remains for such a person to demonstrate that a separate domicile in fact has been established. The circumstances recognized as having the potentially emancipating effect are:

(1) Marriage of the minor person; or

(2) Parental disclaimer of entitlement to the minor's earnings and the minor's proclamation and actual experience of financial independence from the parents, with the actual establishment and maintenance of a separate and independent place of residence.

c. Policy concerning members of the armed forces. The domicile of a person serving in the armed forces is not necessarily affected by assignment in or reassignment out of North Carolina. Such a person may establish domicile for self and dependents by the usual requirements of residential act plus intent. All the residentiary evidence is collected and assessed. In the military context this may include the "home of record." However, the weight to be given the home of record may vary greatly depending upon how recently the home of record was declared and with what branch of service the individual is affiliated. (Some branches do not permit a change in a previously declared home of record.)

d. Policy concerning federal personnel. The domicile of a person employed by the Federal Government is not necessarily affected by assignment in or reassignment out of North Carolina. Such a person may establish domicile for himself and his dependents by the usual requirements of residential act plus intent.

e. Policy concerning aliens. An alien holding a visa which will permit eventual permanent residence in the United States is subject to the same considerations as a citizen. An alien holding a visa which will not permit eventual permanent residence in the United States (for example, a student visa) cannot be classified as a resident.

6. The domicile of individuals who are married. The provisions of G. S. 116-143.1(f) make clear that married persons of either sex are neither

favored nor disadvantaged by virtue of the fact of marriage in the determination of domicile while being classified for tuition status. The statutory provision thus eliminates from tuition status classifications the common law presumption that a wife's domicile is presumed to follow that of her husband. Therefore, the domicile of married persons is identified under the same basic procedure as all other persons—on the merits of all collected relevant residentiary information. G.S. 116-143.1(f) also makes clear, however, that the fact of marriage is part of such residentiary information. In weighing the significance of marriage, though, it is apparent that the General Assembly intended that events and circumstances surrounding the marriage be examined to give the marriage itself any residentiary significance. [See subsections (f)(1), (f)(2), (f)(3), and (i).] This requires, then, consideration of both husband and wife's circumstances when a married individual is classified for tuition purposes. By way of special note, though, as to the consideration of loss of residence for purposes of invoking the twelve-month grace period, even the derived residentiary significance of the marriage cannot be such that the occasion of the marriage per se marks the loss of bona fide legal residence for one or the other spouse. Rather, such time of loss, or "culminating circumstance" must be related to some other event or circumstance but which, of course, might well render the marriage date the time of, if not the legal cause of, change of residence. [Note. Even though the domicile of a married person is identified under the same test as that for a single person,

G. S. 116-143.1(g) provides that husband and wife who have both met that test as to North Carolina may claim the residentiary duration of the two which is the longer.] In application, the various statutory provisions concerning spouse pairs would function in the marital context as follows:

a. A husband and a wife are inferred to have the legal capacity for separate domiciles because the wife's domicile is not presumed to follow that of her husband. It (and the husband's domicile) must be demonstrated rather than presumed.

b. When a man and woman marry, they acquire a new legal relationship that expands their legal capacity for a shared existence. The collective experience of mankind shows that the great majority of newlyweds do share that existence within their newly acquired status. The events subsequent to the marriage and, to some extent prior thereto, however, must be considered if the sharing of domicile of a husband and wife is to be a consequence or facet of the marriage or a continuing aspect of the marriage.

c. Evidence that suggests a shared domicile is common abode, interrelated personal affairs (bank accounts, tax returns, property ownership, etc.), and interdependent social and professional lives. For example, husband and wife (H and W) live in a college town, H completes his education, perhaps a graduate degree, and W works so as to support what appears to be a family unit. Meanwhile, personal affairs are characterized by joint ownership of property, or at least common access thereto.

d. Further evidence is needed to determine other specifics of the domicile, which is taken to be shared. Is the domicile, though shared, determined by the intent and events of one spouse rather than the other. (Perhaps domicile is determined by W who is supporting the family unit; perhaps it is the enrolled spouse H, whose present education and future career opportunities are understood by the spouse pair to dictate location of the family unit. (If H were the determiner of domicile, the substantiality of H and W's residentiary presence would be called into question by G.S. 116-143.1(c), which renders educational intent alone insufficient to demonstrate residentiary presence.) Or possibly, W, a college graduate herself, is simply working to make ends meet, and H just wants to finish up his degree though he knows there is no present market for his educational speciality. In such a case domiciliary intent may be a product of intentions of both H and W, neither of whom has "given much thought to tomorrow." In such a case, events even before the marriage may take on greater significance. Perhaps a parent of H or W promised one of the spouses a job if H and W could not maintain their own circumstances apart from the parental "nest."

e. Whether one spouse or both H and W together determine the domicile and whether or not their residentiary intent and actions are well delineated, H and W must each have a domicile somewhere, and the conclusions to be drawn about its location may well be "judgment calls" subject to the standard of reasonableness in assessing where the preponderance of the evidence lies.

f. If H and W, each before marriage, acquire domicile in North Carolina and if, under the inquiry discussed herein, it is determined that H and W both continued as domiciliaries after marriage, then the spouse having the shorter length of domicile in this State would accede to benefit of the longer domicile for purposes of satisfying the twelve-month durational requirement. [See G. S. 116-143.1(b) and (g).]

g. If either H or W is determined to be a domiciliary of this State and if the other spouse, though a nondomiciliary even after the marriage then becomes a domiciliary of this State, the longer domiciliary duration could be claimed by the spouse possessing the shorter duration in meeting the requirements for resident status for tuition purpose.

h. The capacity of either H or W to acquire a domicile independently of the other implies that either spouse could abandon a present domicile independently. This could occur where facts established that a domicile was no longer shared (or coincided) in North Carolina. The cessation of shared events and actions described in paragraph 3, above, would signal a possible abandonment. These events occur most often in the case of divorce or legal separation, but they might also occur when a husband and wife, by mutual accord, determine to pursue separate professional and/or social goals. Of course, to have domiciliary meaning, such determination would reasonably require separate abodes. (Also see the hypothetical case set forth in Section V.B., below, for circumstances in which further inquiry might permit a finding that H abandoned a common domicile in this State.) If in fact domicile

were abandoned, individually or jointly, the spouse(s) to so abandon domicile in this State would each be required to test the circumstances of his or her abandonment against the requirements of G. S. 116-143.1(i) in seeking benefit of the twelve-month tuition grace period.

7. The statutory grace period following loss of domicile. By provisions of G. S. 116-143.1(i), if a person has been properly classified as a resident for tuition purposes and enjoyed that status while enrolled at a State institution of higher education, a change in that person's state of residence thereafter does not effect in all cases an immediate, automatic loss of entitlement to the in-state tuition rate. The extent of this "grace period" (during which the in-state rate will be applicable in spite of the fact that the individual is not a legal resident of North Carolina) shall be twelve months from the date of the change in legal residence, plus any portion of a semester or academic term remaining, as of the expiration date of the twelve-month period, in which the student is enrolled. In short, no change in applicable rates attributable to expiration of the basic twelve-month grace period will be effected during a semester, quarter, or other academic term in which the student is enrolled. To qualify for the grace period, one must satisfy the following conditions:

a. The individual must have been properly classified as a resident for tuition purposes, on the basis of a valid finding that such individual in fact was a legal resident of North Carolina and had been such for the requisite twelve-month period prior to classification;

b. At the time of subsequent change of legal residence to a state other than North Carolina, the individual must have been enrolled in a public institution of higher education in North Carolina. "Enrolled" as here used shall include both persons who are actually attending the institution during an academic term as well as those whose consecutive attendance of academic terms in pursuit of a degree has been interrupted only by vacation or summer recess periods. A person who effects a change in legal residence during a period while not enrolled is not entitled to the benefit of the grace period (e.g., after completing one degree program and prior to admission to another; while absent from a regular term, at the instance either of the student or of the institution, prior to admission to the institution as a student eligible to matriculate and classification of the individual by the institution as a resident for tuition purposes).

c. Entitlement to the grace period, once perfected, is thereafter applicable for its duration at any public institution of higher education in the State.

d. A married person, under the provisions of G. S. 116-143.1(g), may accede to the benefit of the spouse's residentiary duration if it is no longer than his or her own. Therefore, acquisition of in-state status may be partially derivative of the marriage context, but loss of domicile is the consequence of each spouse's actions (though reliance on the other spouse's domiciliary status may contribute ultimately to that loss). In the context of determining

the beginning point of the tuition grace period, though, G.S. 116-143.1(i) precludes the fact of marriage alone from precipitating loss of domicile. Further, if H and W have both been deemed to have been domiciled in North Carolina for twelve months, the benefit of the grace period may be accorded only that spouse who loses domicile while enrolled in a State institution of higher education. That is, enrolled status of one spouse is not bestowed upon the other spouse with respect to eligibility for the tuition grace period.

V. EXAMPLES OF APPROPRIATE RESIDENCE CLASSIFICATIONS.

A. Typical Cases Not Requiring Extensive Analysis.

Although the statutory mandate, when coupled with other pre-existing general law and statutory requirements of the State of North Carolina, will generate some cases which necessitate an extensive and detailed analysis of facts bearing on the question of domiciliary intent (as discussed hereinabove), a substantial number of cases can be dealt with in summary fashion, consistent with the terms of the basic statute and the provisions of other well-established legal principles. The following hypothetical examples illustrate the correct disposition of such cases:

1. Assume the case of a minor applicant for the fall term of 1975, who has resided with his family since birth (or other extensive period of time) in North Carolina and whose family still resides in the State at the time of admission:

The student will be classified as a resident and accorded the in-state tuition rate because his domicile is North Carolina and has been for more than twelve months.

2. Assume the same set of facts as in example 1, except that in November of 1975, following enrollment, the student's family moves to and establishes a domicile in another state, while the student is still a minor:

Upon registration for the spring term of the 1975-76 school year, the student will be reclassified as a nonresident because, as a minor, his domicile is controlled by that of his parents. However, application of the "grace period" concept to these facts would preclude an immediate change in applicable tuition rate for the prescribed period of time. [Note. Should the parents of an adult student move from the State under otherwise similar circumstances, the student not only might undertake continued residence in North Carolina but might demonstrate such a continued residence under an evidentiary burden made lighter by the fact of the student's "staying behind"—if such staying behind were indeed the case.]

3. Assume that a family moves to North Carolina in August 1974; a college-age son registers for the fall term of 1975 beginning in September; assume that the parents have done those things necessary to become domiciliaries of the State:

The student will be classified as a resident and accorded the in-state rate because, without regard to minority or majority status of the

student, he has resided in North Carolina for more than a year and because the fact of his parents' domicile in the State is controlling prima facie evidence of his domicile, in the absence of rebutting evidence.

4. Assume that a family moves to North Carolina in December of 1974 and establishes their domicile; a college-age son registers for the fall term of 1975 in September:

The student will be classified as a nonresident for tuition purposes for the fall semester because he has not resided in the State for the required twelve months, without necessary reference to the question of whether or not the time so spent in North Carolina was domiciliary in character.

5. Assume the same facts as in example 4, except that the registration is for the spring term of the 1975-76 school year:

The student will be classified as a resident because he has been present in the State for the requisite twelve months prior to registration for the term in question; and, because the preceding year spent in the State coincided with the domicile of his parents in North Carolina, it may reasonably be presumed, in the absence of rebutting evidence, that such enrollment time was spent by the student as a bona fide domiciliary.

6. Assume that a family moves to North Carolina in July of 1975 and a college-age son registers for the fall term of 1975 in September:

The student will be classified as a nonresident. He would be eligible, presumably, for reclassification as a resident one year thereafter,

i.e., the fall term of 1976, assuming that the parents remain in North Carolina.

7. Assume that a person who has not previously lived in North Carolina and whose parents are domiciled in a state other than North Carolina registers for the fall term of 1975 in September, at the age of seventeen:

The student will be classified as a nonresident for tuition purposes because, as a minor, his domicile is that of his parents, i.e., a state other than North Carolina.

8. Assume that a person who has not previously lived in North Carolina and whose parents are domiciled in a state other than North Carolina registers for the fall term of 1975 in September at the age of 18:

The student will be classified as a nonresident for tuition purposes. The student will not have resided in North Carolina for the requisite twelve months prior to registration, without necessary reference to the question of domiciliary intent.

9. Assume the case of a 22-year old person, married and the father of one child, who has completed his undergraduate education in a state other than North Carolina, whose parents do not live in North Carolina, who has not previously lived in North Carolina, and who registers for the fall term of the first year of graduate school in September 1975:

The student will be classified as a nonresident for tuition purposes because he has not been present in North Carolina for the year prior to registration, without necessary reference to the quality of that presence.

B. Cases Requiring Extended Analysis.

In many cases, it will be necessary, under the terms of G. S. 116-143.1, to conduct a more extensive inquiry, involving analysis of the question of domiciliary intent.

1. Assume that a student is enrolled as a freshman at a State institution of higher education; his first presence in North Carolina coincided with his enrollment; prior thereto he had lived with his parents in another state, where his parents continue to maintain their domicile. Upon enrolling for the fall term of his sophomore year, following a period of twelve consecutive months of presence in North Carolina, the student petitions for reclassification as a resident for tuition purposes, alleging that he is a bona fide domiciliary of the State entitled to the in-state tuition rate.

Without the benefit of additional facts, the consecutive inquiries necessary to proper analysis of the case, prior to making an investigation of domiciliary intent, are:

a. Is the student a minor or an adult? If he is a minor, his residence is that of his parents during his minority, and since the parents are domiciled in a state other than North Carolina, he does not qualify for classification as a resident for tuition purposes. Consequently, the matter could be disposed of in summary fashion. However, if at the time of application for reclassification the student is an adult, he is presumptively capable of establishing his own residence, independent of that of his parents, and further inquiry is necessary.

b. Assuming the student is an adult, presumptively capable of establishing a domicile independent of that of his parents, how long has he had adult status? If he has been an adult for less than a full year prior to the filing of his petition, he cannot satisfy the requirement that he be a bona fide domiciliary of the State for twelve months; reference to the twelve-month qualifying period alone is enough to disqualify him, without reference to the question of whether the insufficient period of adulthood was in fact spent as a legal resident of North Carolina. However, if the student was an adult for the full twelve-month period of his presence in North Carolina, an inquiry into the character and quality of his presence in North Carolina during that period is required, viz., was he a domiciliary (legal resident)? Thus, the question of domiciliary intent must be addressed.

The ultimate question presented, then, is whether the student has satisfied the requirements of the statute that he be a bona fide domiciliary of the State for a period of twelve months prior to eligibility for classification as a resident for tuition purposes. The aggregate of the activities of the individual in and out of North Carolina as required to be reported to the relevant institution will be assessed by officials to determine whether or not a clear preponderance of all the evidence is favorable to a claim of residence for twelve months. The student starts in this assessment process as a prima facie (or presumed) nondomiciliary because of his parents' nonresidence. He then either overcomes or remains subject to the presumption in light of all other evidence. The burden of rebutting the adverse

prima facie evidence requires that he produce compelling evidence in favor of the in-state claim.

2. Assume the student in example 1 fails in his attempt to achieve resident status but under nonresident status completes a four-year undergraduate degree course and one year of law school at the same or another State institution of higher education. At the outset of fall term of his second year of law school, the student re-petitions for in-state status. Again, all relevant residentiary information would be collected and assessed. This time, however, the student would not be presumed at the outset to be a nondomiciliary because he had lived (not necessarily been domiciled) in North Carolina for the five years preceding re-registration for the second year of law school. [See G. S. 116-143.1(e).] He would carry only a burden to come forward with a preponderance of the evidence in his favor, showing domicile in this State for the preceding twelve months, in order to achieve in-state tuition status.

3. Assume that the student in example 2 failed again at the outset of his second year of law school to establish his claim to in-state status or even to domicile as of the outset of the second year of law school. Assume further that the student then continued in law school and married a life-long resident of North Carolina during fall term of that second year. Assuming also that the new wife's residentiary intent and manifestations thereof continued at and after marriage, the wife, a life-long domiciliary, would

continue to be eligible for the in-state tuition rate. (The fact of continued residence by the wife would itself be the subject of a residence classification inquiry upon her request for resident status at a State institution of higher education.)

4. Assume that the law student in example 3 reapplied for resident status at the end of fall term in his second year of law school and that the institution found him to be a legal resident of this State but for only two months preceding his re-application. At the outset of spring term in the second year of law school, however, the student might receive benefit of the in-state rate. This is because his residence and that of his wife co-existed in North Carolina, so that her longer legal residence was conferred on him in meeting the twelve-month durational requirement for resident status for tuition purposes. The conferral of this durational benefit would require, however, a residence determination concerning the wife as well. [See G. S. 116-143.1(g).]

5. Assume that the law student in example 4 completed spring term of the second year of law school but that, depressed by protracted intensive studies and unsuccessful adjustment to his new marriage, he moved out of the marital abode in North Carolina, took a law clerk's job for the summer in Virginia, and then returned for the final year at the same law school, in hopes ultimately of practicing law with the firm in Virginia. First, the facts suggest that the law student's departure in the summer to

clerk in Virginia may or may not have been with residentiary intent for Virginia. If all the circumstances would suggest to reasonable persons that there was reasonable doubt about the validity of the prior residence classification, he would be obligated under paragraph III.B.2., above, to notify institutional officials so as to initiate a reclassification inquiry. The residentiary intent and actions undertaken in Virginia would be pivotal in this re-inquiry. This would either confirm the change of circumstance or at least clarify a seemingly ambiguous circumstance. If a change in residence to Virginia, i.e., abandonment of North Carolina domicile, were found by institutional officials, the law student would, nevertheless, continue by statutory grace to enjoy resident tuition status for the twelve months following the determined loss of domicile. This would appear to carry the student through his third and final law school year and might suggest that re-inquiry is unnecessary. It should not be assumed, however, that the student will not falter scholastically and thereby prolong his academic career or that the completion of his law degree necessarily will end his studies at the institution.

6. Assume that the student in example 5, at the outset of fall term for his third year of law school, satisfied institutional officials that he had not abandoned North Carolina domicile for that of Virginia during the immediately preceding summer, and assume that the student satisfactorily then completed fall term of the third year under in-state tuition status. Assume further that the law student, again adversely affected by scholastic

and personal pressures, withdraws from law school between fall term and spring term of the third year of law school. The student then goes immediately thereafter to Virginia, intending to establish Virginia as his domicile, and begins working as a paralegal assistant in the law firm for which he had clerked. Assume that in the months intervening between withdrawal from law school and the close of the succeeding summer, the student resolves to finish that final law school term and thereby get his law degree. Assume that the student is readmitted for the succeeding fall term at his prior law school. At what tuition rate will he attend?

Because there has been a change in material facts concerning the student's resident status, the student is obligated under paragraph III.B.2., above, to initiate a reclassification inquiry at the institution where he has re-enrolled. (If institutional officials charged with making residence classifications also are aware of the events in Virginia, the institution also has such obligations.)

a. If the student is found upon re-enrollment not to possess North Carolina domicile, he will pay the non-resident tuition rate. Even though twelve months had not elapsed between academic withdrawal at the end of the prior fall term and the commencing of the fall term for which he had re-enrolled, the student would not qualify for the grace period benefit. This is because the grace period, by statutory provision, does not apply to those losing North Carolina domicile while not enrolled.

b. If the student is found to have re-acquired North Carolina domicile before re-enrollment, he might or might not be accorded in-state status for tuition purposes. This would depend upon the student's marital status. If the wife had remained a domiciliary of North Carolina and if the student and his wife had not terminated their marriage under law, the wife's continued residence, being in excess of twelve months preceding re-enrollment, would confer on the student husband the durational requirement for receiving resident status for tuition purposes. A successful resident classification would, therefore, require a residence determination of both the student and his wife.

APPENDIX A

§ 116-143.1. Provisions for determining resident status for tuition purposes.--(a) As defined under this section:

(1) A "legal resident" or "resident" is a person who qualifies as a domiciliary of North Carolina; a "non-resident" is a person who does not qualify as a domiciliary of North Carolina.

(2) A "resident for tuition purposes" is a person who qualifies for the in-State tuition rate; a "non-resident for tuition purposes" is a person who does not qualify for the in-State tuition rate.

(3) "Institution of higher education" means any of the constituent institutions of The University of North Carolina and the community colleges and technical institutes under the jurisdiction of the North Carolina State Board of Education.

(b) To qualify as a resident for tuition purposes, a person must have established legal residence (domicile) in North Carolina and maintained that legal residence for at least 12 months immediately prior to his or her classification as a resident for tuition purposes. Every applicant for admission shall be required to make a statement as to his length of residence in the State.

(c) To be eligible for classification as a resident for tuition purposes, a person must establish that his or her presence in the State currently is, and during the requisite 12-month qualifying period was, for purposes of maintaining a bona fide domicile rather than of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education.

(d) An individual shall not be classified as a resident for tuition purposes and, thus, not rendered eligible to receive the in-State tuition rate, until he or she has provided such evidence related to legal residence and its duration as may be required by officials of the institution of higher education from which the individual seeks the in-State tuition rate.

(e) When an individual presents evidence that the individual has living parent(s) or court-appointed guardian of the person, the legal residence of such parent(s) or guardian shall be prima facie evidence of the individual's legal residence, which may be reinforced or rebutted relative to the age and general circumstances of the individual by the other evidence of legal residence required of or presented by the individual; provided, that the legal residence of an individual whose parents are domiciled outside this State shall not be prima facie evidence of the individual's legal residence if the individual has lived in this State the five consecutive years prior to enrolling or re-registering at the institution of higher education at which resident status for tuition purposes is sought.

(f) In making domiciliary determinations related to the classification of persons as residents or non-residents for tuition purposes, the domicile of a married person, irrespective of sex, shall be determined, as in the case of an unmarried person, by reference to all relevant evidence of domiciliary intent. For purposes of this section:

(1) No person shall be precluded, solely by reason of marriage to a person domiciled outside North Carolina, from establishing or

maintaining legal residence in North Carolina and subsequently qualifying or continuing to qualify as a resident for tuition purposes;

(2) No person shall be deemed, solely by reason of marriage to a person domiciled in North Carolina, to have established or maintained a legal residence in North Carolina and subsequently to have qualified or continued to qualify as a resident for tuition purposes;

(3) In determining the domicile of a married person, irrespective of sex, the fact of marriage and the place of domicile of his or her spouse shall be deemed relevant evidence to be considered in ascertaining domiciliary intent.

(g) Any non-resident person, irrespective of sex, who marries a legal resident of this State or marries one who later becomes a legal resident, may, upon becoming a legal resident of this State, accede to the benefit of the spouse's immediately precedent duration as a legal resident for purposes of satisfying the 12-month durational requirement of this section.

(h) No person shall lose his or her resident status for tuition purposes solely by reason of serving in the armed forces outside this State.

(i) A person who, having acquired bona fide legal residence in North Carolina, has been classified as a resident for tuition purposes but who, while enrolled in a State institution of higher education, loses North Carolina legal residence, shall continue to enjoy the in-State tuition rate for a statutory

grace period. This grace period shall be measured from the date on which the culminating circumstances arose that caused loss of legal residence and shall continue for 12 months; provided, that a resident's marriage to a person domiciled outside of North Carolina shall not be deemed a culminating circumstance even when said resident's spouse continues to be domiciled outside of North Carolina; and provided, further, that if the 12-month period ends during a semester or academic term in which such a former resident is enrolled at a State institution of higher education, such grace period shall extend, in addition, to the end of that semester or academic term.

[Note. The 1975 Session Laws of the North Carolina General Assembly render G. S. 116-143.1 as amended effective upon its ratification, which was accomplished May 29, 1975.]

APPENDIX B

North Carolina Public Higher Education

Residence-and-Tuition Status Application

Under North Carolina law, a person may qualify as a resident for tuition purposes in North Carolina, thereby being eligible for a tuition rate lower than that for nonresidents for tuition purposes. Copies of the applicable law and of implementing regulations are available for inspection in the

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and may be examined upon request. In essence, the controlling North Carolina statute (G.S. 116-143.1) requires that "To qualify as a resident for tuition purposes, a person must have established legal residence (domicile) in North Carolina and maintained that legal residence for at least 12 months immediately prior to his or her classification as a resident for tuition purposes." Neither a foreign national nor an alien admitted to the United States on a student visa is eligible for resident tuition status. An alien holding a visa that will permit eventual permanent residence in the United States is subject to the same considerations as a citizen.

DIRECTIONS

1. Respond to all questions within the part(s) of the form that you are to complete. If any question is not applicable to your situation, write "Not Applicable" or "N/A."
2. Print or type all responses. If necessary, write "see attached" in the space provided, and use separate additional sheets, numbering your responses the same as the corresponding question and stapling or taping these sheets to this application form.
3. Be completely accurate to the best of your knowledge and understanding. Knowing falsification of your responses may subject you to disciplinary action including dismissal from the institution. When "date" is requested, give day, month, and year.
4. Sign and date this application where indicated to certify that your responses are correct and that the information you have given may be used by the institution for whatever purposes or inquiries flow legally from your responses.

****

1. Applicant student's full name (Miss, Mr., Mrs., Ms.)_____
   _____
2. Social Security number _____Nationality_____
3. Date of birth_____ Place of birth_____
4. Do you claim to be a legal resident of the State of North Carolina? (Yes)____
   (No)_____ If so, from what date?_____

Note: If your response to question 4 is "no," you need not complete the rest of this form unless subsequently instructed to do so; sign and date the portion completed, at the place indicated.

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5. Beginning with what term of enrollment do you claim entitlement to the in-state tuition rate, if that is your claim? _____

6. Address while attending this institution (current, not past) _____ _____ Telephone _____

7. Permanent home address _____ _____ since (date) _____ Telephone _____

8. Last previous home address in N.C. was _____ _____ from (date) _____ to (date) _____
Last previous home address outside N.C. was _____ _____ from (date) _____ to (date) _____

9. Are you currently enrolled in this institution? (Yes) ____ (No) _____ Are you applying for admission? (Yes) ____ (No) _____.

10. Secondary (high or preparatory) schools you attended, in sequence.

Name	Address (place & state)	Dates attended (from)	(to)
_____	_____	_____	
_____	_____	_____	

11. Post-secondary schools (universities, colleges, junior colleges, community colleges, etc.) you have attended, in sequence (including this institution).

Name	Address (place & state)	Dates attended
_____	_____	_____
_____	_____	_____

12. Has your residence status for tuition purposes ever been previously determined by any North Carolina public educational institution? (Yes) _____ (No) ____ If yes, (a) give name of institution _____ _____ (b) circle classification: Resident Nonresident (c) give last term and year you were so classified: _____

13. Father living? (Yes) ____ (No) _____ Name _____
Permanent home address _____
since (date) _____ Occupation _____

14. Mother living? (Yes ____ (No) _____ Name _____
Permanent home address _____
since (date) _____ Occupation _____

15. Are parents separated or divorced? (Yes) _____ (No) _____ If yes, who has custody of children? _____

16. Legal guardian of the person? (Yes) ____ (No) _____ Name _____ _____ Permanent home address _____
since (date) _____ Occupation _____
Court appointed at (place) _____ on (date) _____

17. Why and when did you move your home to North Carolina? (reason) _____ _____ (date) _____

18. When and from what state or foreign country did you move your home and legal residence to North Carolina? Moved from_____ on (date) _____

19. When do you claim that you began your legal residence (domicile) in North Carolina? (date)_____

20. Your marital status: single____ married ____ (date)_____ divorced _____ (date)_____ separated _____ (date)_____ legal separation ____ (date)_____ widowed_____ (date)_____ marriage annulled ____ (date)_____

21. If married, your spouse's name_____ Occupation_____ Employer_____ Permanent home address_____ since (date)_____ Last previous permanent home address outside N.C. _____ from (date)_____to (date)_____ Present legal residence (domicile) is (State) _____ since (date)_____

22. List all places where you have spent at least 7 consecutive days during the past three years (omitting vacations). Dates

Places	(from (to)	Purpose
a)_____	_____	_____
b)_____	_____	_____
c)_____	_____	_____

23. Who last claimed you as an exemption on State and/or Federal income tax returns, for what tax year, and in what state filed?
    a) On State return for _____ tax year, filed in (State) _____ Name_____ Relationship to you_____
    b) On Federal return for _____ tax year, filed in (State)_____ Name_____ Relationship to you_____

24. Name each state or foreign country (1) where you did any of the following within the last 24 months or (2) if not done in the last 24 months, where such acts were last done. (Provide month, day, and year of each such act; if never done, write "never.") (Month/Day/Year)
    a) Voted_____ _____
    b) Registered to vote_____ _____
    c) Called to serve on jury duty_____ _____
    d) Acquired or renewed driver's license_____ _____
    e) Filed state income tax return_____ _____
    f) Filed state intangible tax return_____ _____
    g) Listed personal property for taxation_____ _____
    h) Acquired ownership of property for use as your principal dwelling_____ _____
    i) Registered/licensed a motor vehicle (car, truck, or other requiring license)

Type of vehicle (list all)	Where registered/licensed	
_____	_____	_____
_____	_____	_____
_____	_____	_____

j) Spent vacations (place & state) (Month/Day/Year)

_____ _____

_____ _____

25. The car(s) or other motor vehicles that you maintain and operate in N.C. are owned by (Name)_____ (Address)_____
Registered/licensed in (state or foreign country)_____

26. The car(s) or other motor vehicles that you maintain and operate in N.C. are insured in the name of _____
(Address)_____.

27. List the addresses at which you own and maintain personal property (clothing, furniture, cars, boats, savings accounts, dogs, jewelry, appliances, etc.) and give percentage value (of total personal property) maintained at each address.

	Address	% at this Address
a)	_____	_____
b)	_____	_____
c)	_____	_____

28. List employment for wages in the last twenty-four months.

	Employer	Address (place & state)	Dates	Hrs. worked per week
a)	_____	_____	_____	_____
b)	_____	_____	_____	_____
c)	_____	_____	_____	_____
d)	_____	_____	_____	_____

29. List the sources and uses of the money required to meet your expenses.

Source	Preceding Calendar Year % of Total	Used for	Current Calendar Year % of Total	Used for
Your earnings	_____	_____	_____	_____
Parent(s) or Guardian	_____	_____	_____	_____
Spouse's earnings	_____	_____	_____	_____
Other (specify) _____	_____	_____	_____	_____

30. Are you now in, or a veteran of, active military service or other Federal government employment? (Yes)_____ (No)_____. If answer is "yes,"
Your home address upon entry_____
Your official home address now_____
Date this home address was declared_____ Your official "home of record"_____Your home address upon discharge_____
_____ Place to which you were paid mileage upon discharge_____

31. If you (1) now live regularly with, (2) have lived with during the immediately preceding 24 months, or (3) continue to maintain close ties with and periodically live with, another person (such as a parent, legal guardian, spouse, or other relative), answer the following <u>for each such person</u>. (Answer only for one adult at each address. If married, complete for spouse; if separation occurred within last 24 months, complete for spouse; if divorce occurred within last 24 months, complete for ex-spouse.)

a) Name _____ Relationship to you_____
Permanent home address_____
Lived at this address since (date)_____ Last previous permanent home address _____ from (date)_____
to (date)_____ Is any such person now in, or a veteran of, active military service or other Federal government employment? (Yes)___
(No)_____ If answer is "yes," give
Home address upon entry_____
Official "home of record"_____
Date this address declared_____ Home address upon discharge _____Date of discharge_____

b) Places (states or foreign country) and dates where each of the following acts (1) was performed by each such person within the last 24 months or (2) if not done in the last 24 months, where such person last did each act. (If never done, write "never.") (Month/Day/Year)

Voted_____ _____
Registered to vote_____ _____
Served on jury duty_____ _____
Acquired driver's license_____ _____
Filed State income tax return_____ _____
Filed State intangible tax return_____ _____
Listed personal property for taxation_____ _____
Acquired ownership of property for use as principal dwelling_____ _____
Inclusive dates of such property ownership:
from (date)_____ to (date)_____
Registered/licensed motor vehicle(s)_____ _____
Claimed you as an exemption on
State income tax return_____ _____
Federal income tax return_____ _____

32. If you are an alien, what type of visa do you have?_____
If you have an immigrant visa, attach official verification or, where permitted, a machine copy of front and back of alien identification card.

33. Describe any other circumstances, events, or acts, specifying their place and date, that you feel support your claim to North Carolina residence for tuition purposes:

I certify that these responses are true to the best of my knowledge, pursuant to reasonable inquiry where needed, and that this form as completed may be used by the institution for whatever purposes of inquiry flow legally from their contents.

including verification of my responses by city, county, state, and Federal agencies where permissible under law.

Applicant's signature	Date
Signature of parent or guardian (if applicant is under 18 years of age)	Date

APPENDIX C

Notice to Student

Your current residential classification, for purposes of applicable tuition rates, is required to be changed if, since original establishment of your current classification, your state of legal residence has changed.

(1) If you currently are classified as a nonresident for tuition purposes, it is your right to petition for a change in classification to that of resident if you claim that you are now and, for at least the twelve-month period immediately preceding the date of such petition, have been a legal resident of the State of North Carolina. If it is determined that in fact you have been a legal resident for the required twelve-month period, the effective date of change in applicable tuition rates shall be the beginning of the academic term next following the date of application for tuition change, provided, that a change in billing rate may be made retroactive to the beginning of an academic term during which application was made if the twelve-month period is found to have been satisfied as of the beginning of that term.

(2) If you currently are classified as a resident for tuition purposes, it is your obligation to petition for a change in classification to that of a nonresident if you have reasonable basis for believing that change in facts requires such a change in classification. Failure to fulfill this obligation may result in appropriate disciplinary action including, but not necessarily limited to, cancellation of enrollment. If it is determined that in fact you have become a nonresident, the effective date of change in applicable tuition rates shall be the next semester, quarter, or term following the date of change in facts which required the change in classification, unless you are deemed eligible to further enjoy the in-state tuition rate under the statutory twelve-month grace period.

Copies of the applicable North Carolina law and institutional regulations which govern such classification determinations are available in the

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for inspection upon request. You are responsible for being familiar with the contents of these two sources of regulation.